WP(C) 3097/2007
BEFORE
THE HON'BLE MR JUSTICE I.A.ANSARI
WP(C) No. 3097 of 2007.

AFCONS INFRASTRUCTURE LTD.,
A Limited Company incorporated under
the Companies Act, 1956, having its
registered office at Afcons House, 16,
Shah Industrial Estate, Veera Desai Road,
Andheri (West), Mumbai - 400 050 and one;
of its place of business at AT Road, Guwahati,
represented by one of its director
Mr. S Paramesivan, resident of Afcons House,
16, Shah Industrial Estate, Veera Desai Road,
Andheri (West), Mumbai - 400 050
.

----- PETITIONER.

VERSUS

1. THE STATE OF ASSAM,
Represented by the Commissioner & Secretary
to the Government of Assam,
Department of Finance (Taxation), Dispur,
Guwahati - 781 006.

2. COMMISSIONER OF TAXES,
Kar Bhawan, GS Road, Dispur,
Guwahati - 781 006.

3. THE JOINT COMMISSIONER OF TAXES,
Kar Bhawan, GS Road, Dispur,
Guwahati - 781 006.

4. THE ADDITIONAL COMMISSIONER OF TAXES,
Kar Bhawan, GS Road, Dispur,
Guwahati - 781 006.

5. THE SUPERINTENDENT OF TAXES,
Guwahati Unit - D, Kar Bhawan,
Guwahati.

----- RESPONDENTS.

WP(C) No. 3582 of 2007

HINDUSTAN CONSTRUCTION CO. LTD.,
A Limited Company incorporated under
the Companies Act, 1956, having its
registered office at Hincon House, Lal Bahadur Shastri Marg, Vikhroli (West), Mu
mbai - 400 083.
.

----- PETITIONER.

VERSUS

1. THE STATE OF ASSAM,
Represented by the Commissioner & Secretary
to the Government of Assam,

Department of Finance (Taxation), Dispur,
Guwahati - 781 006.

2. COMMISSIONER OF TAXES,
Kar Bhawan, GS Road, Dispur,
Guwahati - 781 006.

3. THE JOINT COMMISSIONER OF TAXES,
Kar Bhawan, GS Road, Dispur,
Guwahati - 781 006.

4. THE ADDITIONAL COMMISSIONER OF TAXES,
Kar Bhawan, GS Road, Dispur,
Guwahati - 781 006.

5. THE SUPERINTENDENT OF TAXES,
Guwahati Unit - D, Kar Bhawan,
Guwahati.

----- RESPONDENTS.

BEFORE
THE HON'BLE MR. JUSTICE I A ANSARI.

For the petitioner : DR. AK SARAF, Senior Advocate.
MR. D BARUAH, MS. ML GOPE,
MS. N HAWELIA, MR. S CHETIA,
MR. A GOYAL, Advocates.

For the respondents: MR. R DUBEY, Advocate.

Date of hearing : 27-07-2007

Date of judgment : 10.08.2007

JUDGMENT AND ORDER

I have heard Dr. AK Saraf, learned Senior counsel, appearing on behalf of the petitioners, and Mr. R Dubey, learned counsel for the respondents.

2. The material facts, which have given rise to these two writ petitions, are thus: The writ petitioners are works contractors and engaged in civil construction works. In the course of execution of the works contract, the petitioners use various goods including the goods, which stand declared as goods of special importance in inter-State trade or commerce under Section 14 of the Central Sales Tax Act, 1956, and known as declared goods. When the Superintendent of Taxes informed the petitioners that all goods including declared goods, used in execution of works contract, shall, in terms of Schedule V to the Assam Value Added Tax Act, 2003, (in short, Assam VAT Act), be subject to levy of Value Added Tax (in short, VAT) @ 12.5%, the petitioners disputed the assertion that the declared goods too, used in the execution of works contract, were subject to tax at a rate exceeding 3% on sale or purchase price thereof. Thereafter, an order, under Section 105 of the VAT Act read with Rule 56 of the Assam Value Added Tax Rules, 2005 (in short, 'the VAT Rules'), was made, on 10-04-2007, by the Joint Commissioner of Taxes, Assam, and Additional Commissioner of Taxes, Assam, holding that the State can levy tax on works contract by treating the same as distinct species apart from the constituent materials undergoing bodily transfer. With the clarification, so issued, the claim of the petitioners that the declared goods,

used in the execution of works contract, cannot be taxed at a rate higher than 3% has been answered in the negative. With the help of these two writ petitions, the petitioners put to challenge the order, dated 10.04.2007, aforementioned.

3. The question, therefore, which falls for determination, in the present writ petitions, is this: whether the State has the power to levy taxes on declared goods at a rate higher than 3%, when there is deemed sale of such goods in the course of execution of works contract? This question brings to fore a larger and more significant question and the question is: whether the goods, which are declared to be goods of special importance in inter-State trade or commerce and known as declared goods are, even if used in the execution of works contract, remain subject to the restrictions or limitations imposed on the legislative power of the State by Section 15 of the Act of 1956, so far as, at least, the rate of tax is concerned?

4. For the purpose of appreciating the controversy raised in the present writ petitions, the historical background of the 46th amendment of the Constitution, which made provisions for levy of sales tax on works contract, needs to be recalled. Before the 46th amendment, there was conflict of judicial opinion as regards the question as to whether the State has legislative power to impose sales tax on goods involved in the execution of works contract, where the contract was single and indivisible. The question, therefore, raised was if there is at all a sale of those materials, which are used in the execution of a works contract. The Madras High Court, in Gannon Dunkerley & Co. (Madras) Ltd. -vs- State of Madras (AIR 1954 Mad 1130), took the view that works contract was not a contract for sale of materials used in the execution of the works contract, for, the contract, being entire and indivisible, cannot be broken into two separate segments, one being the contract for sale of materials and the other being the contract for payment of the works done. The Court, therefore, concluded that the definition of 'sale', as contained in the Madras General Sales Tax Act, 1939, which included, within the definition of the term 'sale', a transfer of property in goods involved in the execution of a works contract, was beyond the legislative competence of the Provincial legislature. This view was followed in judicial pronouncements of some of the High Courts. To the contrary was the view taken by the Mysore High Court, in Mohamed Khasim -vs- State of Mysore, reported in (1955) 6 STC 211 (MYS), for, this decision upheld the power of the State to impose sales tax on the entire turnover relating to construction work by treating the goods, used in execution of the works contract, as transfer of property in goods involved in the execution of the works contract.

5. The above conflict of judicial opinion was resolved by the Apex Court in State of Madras -vs- Gannon Dunkerley & Co. (Madras) Ltd, (AIR 1958 SC 560), wherein the decision of the Madras High Court was affirmed holding to the effect, inter alia, that in a building contract, which is entire and indivisible, there is no sale of goods, because, in such a contract, the agreement between the parties is that the contractor should construct the building according to the specifications contained in the agreement and, in consideration therefor, receive payment as provided by the contract agreement and that in such an agreement, there is neither contract to sell the materials used in the construction nor does the property, in the goods, used in the construction work, pass, as movables to the person, who allots the works contract. The Apex Court, therefore, took the view that it was not within the legislative competence of the Provincial legislature, under Entry 48 in list II of 7th Schedule to the Government of India Act, 1935, to impose tax on the supply of materials used in a works contract by treating the supply of such materials as a 'sale'. In Gannon Dunkerley & Co. (Madras) Ltd. (supra), the Apex Court also clarified that while the legislature is incompetent to impose sales tax on the goods used in execution of those works contract, wherein the contracts are entire and indivisible, there may be a case, wherein the parties have entered into a distinct and separate contract, one for transfer of the materials for money consideration and the other for payment of remuneration

for the service rendered and the works done. In the latter case, pointed out the Supreme Court, there are really two agreements, though there may be a single instrument embodying both the agreements; hence, the power of the State to separate the agreement to sell from the agreement to do the work and render service is possible and, consequently, the State may impose tax so far as the agreement relating to transfer of materials for money consideration is concerned. In short, in Gannon Dunkerley & Co. (Madras) Ltd. (supra), what was held was that in the case of building construction, if the works contract is entire and indivisible, the property in goods does not pass to the other party to the contract, but if a contract consists of two separate parts, one relating to the supply of materials for money consideration and the other for payment of remuneration for services rendered and for the works done, the legislature is competent to impose tax so far as the supply of materials is concerned and, hence, the State cannot, if the contract is one, which is indivisible, impose sales tax on the goods, used in the execution of the works contract, by treating the use of such goods as transfer of property in the goods used in the execution of the works contract.

6. Following the decision in Gannon Dunkerley & Co. (Madras) Ltd. (supra), the Apex Court, in Pandit Banarasi Das Bhanot and others -vs- State of M.P., reported in 9 STC 389, held that in a building construction, which is one, entire and indivisible, there is no sale of materials used and, hence, it is beyond the powers of the State legislature to impose tax on supply of those materials, which are used in such works contract.

7. Consequent upon the decisions in Gannon Dunkerley & Co. (Madras) Ltd. (supra) and Pandit Banarasi Das Bhanot (supra), it became impossible for the States to bring the works contract, involving use of materials, within the State's sales tax enactments. Hence, by the 46th amendment of the Constitution, power was given to the State legislature to impose sales tax on the transfer of property in goods -whether as goods or in some other form - involved in the execution of works contract. Article 366 of the Constitution, which is the definition clause, stood accordingly amended by insertion of Clause 29(A). This clause (29-A) of Article 366 reads as under:-

> (29-A) tax on the sale or purchase of goods includes-
>
> (a) a tax on the transfer, otherwise than in pursuance of a contract, of property in any goods for cash, deferred payment or other valuable consideration;
>
> (b) a tax on the transfer of property in goods (whether as goods or in some other form) involved in the execution of a works contract;
>
> (c) a tax on the delivery of goods on hire-purchase or any system of payment by instalments;
>
> (d) a tax on the transfer of the right to use any goods for any purpose (whether or not for a specified period) for cash, deferred payment or other valuable consideration;
>
> (e) a tax on the supply of goods by any unincorporated association or body of persons to a member thereof for cash, deferred payment or other valuable consideration;
>
> (f) a tax on the supply, by way of or as part of any service or in any other manner whatsoever, of goods, being food or any other article for human consumption or any drink (whether or not intoxicating), where such supply or service, is for cash, deferred payment or other valuable consideration,
>
> and such transfer, delivery or supply of any goods shall be deemed to be a sale of those goods by the person making the transfer, delivery or supply and a purchase of those goods by the person to whom such transfer, delivery or supply is made;

8. Following insertion of Clause 29(A) of Article 366, Article 286 was also amended by bringing in clause (3). With the amendment, so made, Article 286 reads runs as under:-

Article 286: Restrictions as to imposition of tax on the sale or purchase of goods -
(1) No law of a State shall impose, or authorize to imposition of, a tax on the sale or purchase of goods where such sale or purchase takes place-
(a) outside the State; or
(b) in the course of import of the goods into, or export of the goods out of, the territory of India.
(2) Parliament may by law formulate principles for determining when a sale or purchase of goods takes place in any of the ways mentioned in clause (1).
(3) Any law of a State shall, in so far as it imposes, or authorize the imposition of -
(a) a tax on the sale or purchase of goods declared by Parliament by law to be of special importance in inter-State trade or commerce; or
(b) a tax on the sale or purchase of goods, being a tax of the nature referred to in sub-clause (b), sub-clause (c) or sub-clause (d) of clause 29 A of Article 366.
be subject to such restrictions and conditions in regard to the system of levy, rates and other incidents of the tax as Parliament may by law specify.

9. What is, now, of utmost importance to note is that Article 366 (29A) of the Constitution was obviously not enacted to confer larger benefits on the persons engaged in carrying out works contract, who transfer the property in the goods used, in such works contract, to the other person to the contract. The object of the amendment was, in fact, to bring into the tax net of the State legislature those transactions, which would not have, otherwise, been brought to, or fallen under, the State's sales tax enactments.

10. Article 286 of the Constitution imposes fetters on the powers of the State to impose tax on the sale and purchase of goods, where such sale or purchase of goods takes place outside the State or in course of import of the goods into, or export of the goods out of, the territory of India. By clause (2) of Article 286, Parliament is authorized to formulate principles for determining as to when a sale or purchase of goods takes place in any of the ways mentioned in clause (1), namely, outside the State or in the course of import into, or export out of, the territory of India. Clause (3) of the Article 286 provides, inter alia, that any law of the State, in so far as it imposes or authorizes imposition of tax on the sale or purchase of goods declared by Parliament by law to be of special importance in the inter-State trade or commerce, be subject to such restrictions and conditions with regard to the system of levy of rates and other incidence of tax as the Parliament may be law specify. The object of Article 286 of the Constitution is to invest the Parliament with exclusive authority to enact laws imposing tax on sale or purchase of goods, where such sale or purchase takes place in the course of inter-State trade or commerce or in the course of import into, and export out of, the territory of India. It is in exercise of the authority under Article 286 that the Central Sales Tax Act, 1956, has been enacted.

11. As the Central Sales Tax Act, 1956, has been enacted by the Parliament in exercise of its powers under Article 286, it logically follows that any State enactment relating to imposition of sales tax on sale or purchase, which takes place in the course of inter-State trade or commerce, shall be subject to the restrictions and conditions imposed by the Central Sales Tax Act, 1956. It further follows from the conclusion, so reached, that when the Parliament declares a good as goods of special importance under Section 14 of the Central Sales Tax Act, 1956, the legislative power of the State to impose tax on such goods shall be subject to the restrictions and limitations, which Section 15 of the said Act imposes. Situated thus, it is clear that even the declared goods, when used in the execution of works contract, would be subject to the limitations imposed by Section 14.

12. From what has been pointed out above, it is clear that the legislative p

ower of the State, under Entry 54 of State List, to impose tax on sale or purcha se of goods is subject to two limitations. One limitation, which flows from the entry itself, is that the State's legislative power is subject to the provision s of Entry 92A of List-I and the other one flows from the restrictions containe d in Article 286. Under Entry 92A of List-I, Parliament has the power to make la ws in respect of taxes on sales and purchases, which take place in the course of inter-State trade and commerce. The levy and collection of such tax is governed by Article 269. This shows that the State's legislative power, under Entry 54, does not extend to imposing tax on sale and purchase of goods, which takes place outside the State or in the course of import or export of goods. Naturally, the refore, the State's legislative power to impose sales tax on sale or purchase of declared goods shall be, if I may reiterate, subject to the restrictions impose d by law, which may be made by the Parliament.

13. For determining the extent to which insertion of Sub-clause (b) of Claus e (29-A) in Article 366 changed the power of the State to impose sales tax, the contents of Sub-Clause (b) of Clause (29-A) needs to be, now, examined. I may po int out that Article 366 is the definition clause of the Constitution. In the l ight of the insertion of Sub-Clause (b) of Clause (29-A), when Clause (29-A) is considered, what becomes transparent is that according to Clause (29-A), tax on the sale or purchase of goods includes, inter alia, a tax on the transfer of p roperty in goods (whether as goods or in some other form) involved in the execut ion of a works contract; and such transfer, delivery or supply of any goods shal l be deemed to be a sale of those goods by the person making the transfer, deliv ery or supply and a purchase of those goods by the person to whom such transfer, delivery or supply is made.

14. When the provisions of Clause (29-A) are read, in the light of Sub-Claus e (b) thereof, it becomes clear that tax on sale or purchase of goods includes, amongst others, a tax on the transfer of property in goods (whether as goods or in some other form) involved in the execution of a works contract and that such transfer of property in goods shall be deemed to be a sale of the goods by the p erson, who makes transfer, deliver or supply, and a purchase of those goods by t he person to whom such transfer, delivery or supply is made.

15. The Constitutional validity of the 46th amendment as well as the amendme nts made in the State legislations came to be considered by a Constitution Bench , in Builders Association of India and others Vs. Union of India and others, rep orted in (1989) 2 SCC 645, wherein the Apex Court points out that what the 46th Amendment has done is that it clarified that a transfer of property in goods (wh ether as goods or in some other form) involved in the execution of a works contr act would be deemed to be a sale of goods involved in the execution of the works contract by the person making the transfer and a purchase of those goods by the person to whom such transfer is made. Thus, what was, before the 46th Amendment , not regarded as a sale, because it was, initially, not a sale, became, with th e help of the deeming provisions introduced by Sub-Clause (b) of Clause (29-A), a sale of goods. The object of the new definition of sale, introduced by Clause (29-A), was, thus, as observed by the Constitution Bench, in Builders Associatio n (supra), to enlarge the scope of tax on sale or purchase of goods so that it m ay include, within its sweep, transfer, delivery or supply of goods even in exec ution of a works contract. So construed, points out the Supreme Court, in Builde rs Association (supra), the expression tax on the sale or purchase of goods , i n Entry 54 of the State List, includes a tax on the transfer of property in good s involved in the execution of the works contract.

16. Referring to Clause (3) of Article 286, the Supreme Court, in Builders Association (supra), observes that Clause (3) of Article 286 deals with a tax on sale or purchase of goods declared by the Parliament by law to be of special im portance in inter-State trade or commerce and the restriction, so envisaged, by Clause (3) of Article 286, being general in nature, applies with equal vigour to

transfer, delivery or supply of goods, which are deemed to be sales by virtue of Clause (29-A) of Article 366.

17. Leaving no room for doubt, the Constitution Bench, in Builders Association (supra), holds, If any declared goods, which are referred to in Section 14 of the Central Sales Tax Act, 1956 are involved in such transfer, supply or delivery, which is referred to in clause (29-A) of Article 366, the sales tax law of a State, which provides for levy of sales tax thereon will have to comply with the restrictions mentioned in Section 15 of the Central Sales Tax Act, 1956. (Emphasis is added)

18. From the observations noted above, it becomes clear that even when declared goods are used in execution of a works contract and though use of such declared goods would amount to sale for the purpose of taxation, yet the tax on sale or purchase of such goods would be subject to restrictions, which Section 15 of the Central Sales Act, 1956, imposes on the sale or purchase of goods in general.

19. I may, at this stage, pause and point out that before the 46th Amendment, as already discussed above, the Supreme Court's view, as propounded in Gannon Dunkerly & Co. (Madras) Ltd. (supra), was that when a works contract is executed, the property does not pass as a moveable property unless there is an express agreement stating that the property, in such movables, will pass to the person, who has assigned the contract, as and when the goods are used in the construction of the building and that in the absence of any such agreement, transfer of property in goods passes not as movables, but by aggression and in an unidentifiable and invisible manner. In all such cases, according to what was laid down in Gannon Dunkerly & Co. (Madras) Ltd. (supra), it was not possible to disintegrate the contract into a contract of sale of goods and a contact for work and labour only.

20. I may also point out that even after the decision in Gannon Dunkerly & Co. (Madras) Ltd. (supra), it was quite possible that where a contract entered into in connection with the construction of a building consisted of two parts, namely, one part relating to the sale of materials to be used in the construction of a building by the contractor to the person, who had assigned the contract, and the other part dealt with the supply of labour and services, sales tax was leviable on the goods, which were credited to be sale under the first part in such a contract. What could not have been done, in the light of the decision in Gannon Dunkerly & Co. (Madras) Ltd. (supra), was that sales tax could not have been levied, when the contract for construction was a single and indivisible one. After the 46th amendment, a works contract, which was, otherwise, an indivisible one, has been, by a legal fiction, converted into a contract, which is divisible one for sale of goods used in the execution of the works contract, and the other for supply of labour and rendering services. Thus, with the 46th amendment, it has become possible for the State to levy sales tax on the value of the goods involved in a works contract in the same way in which sales tax was leviable on the price of goods and materials supplied in a building contract, which involved two distinct and separate parts as indicated hereinbefore. When this legal fiction is taken to its logical end, there remains no room for doubt that the transfer of property in goods involved in execution of a works contract remains subject to the law, which may be made by the Parliament by virtue of its powers under Article 286. In other words, when the power to impose tax on sale, in an ordinary sense, is subject to certain conditions and restrictions imposed by the law, which the Parliament may make in exercise of its powers under Article 286, there is no reason why the State's power to impose tax even on a transaction, which is, with the help of legal fiction, deemed to be a sale, shall not remain subject to the same restrictions.

21. Explaining with absolute clarity, the change, which the 46th Amendment brought into the realm of the State's competence to impose sales tax, the Supreme Court observed, in Builders Association (supra), at para 36 thus :

> 36. Even after the decision of this Court in the State of Madras v. Gannon Dunkerley & Co. (Madras) Ltd (1959 SCR 379 : AIR 1958 SC 560 : (1958) 9 STC 353). It was quite possible that where a contract entered into in connection with the co

nstruction of a building consisted of two parts, namely, one part relating to th e sale of materials used in the construction of the building by the contractor t o the person who had assigned the contract and another part dealing with the sup ply of labour and services, sales tax was leviable on the goods which were agree d to be sold under the first part. But sales tax could not be levied when the co ntract in question was a single and indivisible works contract. After the 46th A mendment the works contract which was an indivisible one is by a legal fiction a ltered into a contract which is divisible into one for sale of goods and the oth er for supply of labour and services. After the 46th Amendment, it has become po ssible for the States to levy sales tax on the value of goods involved in a work s contract in the same way in which the sales tax was leviable on the price of t he goods and materials supplied in a building contract which had been entered in to in two distinct and separate parts as stated above. It could not have been th e contention of the revenue prior to the 46th Amendment that when the goods and materials had been supplied under a distinct and separate contract by the contra ctor for the purpose of construction of a building the assessment of sales tax c ould be made ignoring the restrictions and conditions incorporated in Article 28 6 of the Constitution. If that was the position can the States contend after the 46th Amendment under which by a legal fiction the transfer of property in goods involved in a works contract was made liable to payment of sales tax that they are not governed by Article 286 while levying sales tax on sale of goods involve d in a works contract ? They cannot do so. When the law creates a legal fiction such fiction should be carried to its logical end. There should not be any hesit ation in giving full effect of it. If the power to tax a sale in an ordinary sen se is subject to certain conditions and restrictions imposed by the constitution , the power to tax a transaction which is deemed to be a sale under Article 366(29-A) of the Constitution should also be subject to the same restrictions and co nditions. Ordinary unless there is a contract to the contrary in the case of a w orks contract the property in the goods used in the construction of a building p asses to the owner of the land on which the building is constructed, when the go ods or materials used are incorporated in the building. The contractor becomes l iable to pay the sales tax ordinarily when the goods or materials are so used in the construction of the building and it is not necessary to wait till the final bill is prepared for the entire work. In Hudson’s Building Contracts (8th edn.) at page 362 it is stated thus :

The well known rule is the property in all materials and fittings, once incorpor ated in or affixed to a building, will pass to the freeholder - quicquid plantat ur solo cedit. The employer under a building contract may not necessarily be the freeholder, but may be lessee or licensee, or even have no interest in the land at all, as in the case of a sub-contract. But once the builder has affixed mate rials, the property in them passes from him, and at lest as against him they bec ome the absolute property of his employer, whatever the latter’s tenure of or ti tle to the land. The builder has no right to detach them from the soil or buildi ng, even though the building owner may himself be entitled to sever them as agai nst some other person - e.g., as tenant’s fixtures. Nor can the builder reclaim them of they have been subsequently severed from the soil by the building owner or anyone else. The principle was shortly and clearly stated by Blackburn J. in Appleby v. Meyers (1867 LR 2 CP 651 at 659) ’Materials worked by one into the pr operty of another become part of that property. This is equally true whether it be fixed or movable property. Bricks build into a wall become part of the house, thread stitched into a coat which is under repair, or planks and nails and pitc h worked into a ship under repair, become part of the coat or the ship.

22. The above observations made by the Supreme Court, in Builders Associatio n (supra), make it clear, if I may reiterate, that by way of legal fiction, whic h the 46th Amendment has introduced with the help of insertion of Sub-Clause (b) of Clause 29A of Article 366, a transaction, which was, otherwise, not regarded as a sale, has been made, and shall be deemed to be, a sale and, hence, the lim itations with which suffer a State legislature’s power to impose sales tax on th e actual sale, a deemed sale also suffers from same limitations. In short, wheth

er an actual sale by transfer of property in goods or by a deemed sale, when the property in goods is deemed to have been transferred, the limitations, imposed on the power of the State to levy sales tax, remain the same.

23. Following the case of Builders Association (supra), a Constitution Bench had to deal with the subject of deemed sale in M/s. Gannon Dunkerly and Co. and others Vs. State of Rajasthan, reported in (1993) 1 SCC 364. In M/s. Gannon Dunkerly and Co. and others (supra), it was contended, on behalf of the State, that State's power, under Entry 54 of the State List, to impose tax on transfer of property in goods involved in the execution of a works contract can be restricted if the Parliament makes law under Article 269(3) and since no law has been made so far by the Parliament under Section 269(3), the restrictions, imposed by the Central Sales Tax Act, 1956, which stand enacted by virtue of the Parliament's power under Article 286(2), are not applicable to transfer of property in goods involved in the execution of a works contract. The contention, so raised, was wholly rejected by the Constitution Bench, in M/s. Gannon Dunkerly and Co. and others (supra).

24. In Gannon Dunkerly & Co. (Madras) Ltd and others. (supra), the Apex Court, taking note of its decision in Builders Association (supra), has pointed out, at para 31, that the legislative power of the States, under Entry 54 of the State List, is subject to two restrictions, one assigned from the entry itself, which makes the said power subject to provisions of Entry 92A of List I and the other assigned from the prohibition contained in Article 286. Under Clause (3) of Article 286, the Parliament is competent to make a law placing restrictions and conditions on the exercise of the legislative power of the State under Entry 54 of the State List with regard to the system of levy, rates and other incidents of tax. Such a restricted law may be in relation to (a) goods declared by the Parliament to be of special importance and in inter-State trade or commerce or (b) to taxes of the nature referred to in Sub-Clause (b), (c) and (d) of Clause 29A of Article 366. When such a law is enacted by the Parliament, legislative power of the States, under Entry 54 in the State List, has to be exercised subject to the restrictions and conditions specified in that law. It is in exercise of the power conferred by Article 286 (3) that the Parliament has enacted Sections 14 and 15 of the Central Sales Tax Act, 1956. No law has, however, been made by the Parliament in exercise of its power under Article 269 (3).

25. Dealing with the above position of law, the Apex Court, in M/s. Gannon Dunkerly and Co. and others (supra), at para 37, observed:

> 37. For the reasons aforesaid, we are of the view that even in the absence of any amendment having been made in the Central Sales Tax Act (after the Forty-sixth Amendment) expressly including transfers of property in goods involved in execution of a works contract, the provisions contained in Sections 3, 4 and 5 would be applicable to such transfers and the legislative power of the State to impose tax on such transfer under Entry 54 of the State List will have to be exercised keeping in view the provisions contained in Section 3, 4 and 5 of the Central Sales Tax Act. For the same reasons Section 14 and 15 of the Central Sales Tax Act would also be applicable to the deemed sales resulting from transfer of property in goods involved in the execution of a works contract and the legislative power under Entry 54 in State List will have to be exercised subject to the restrictions and conditions prescribed in the said provisions in respect of goods that have been declared to be of special importance in inter-State trade or commerce. (Emphasis is added)

26. The observations made, at para 37, makes it abundantly clear that the limitations, imposed by Sections 14 and 15 of the Central Sales Tax Act, 1956, would also apply to the deemed sale, which result from transfer of property in goods involved in the execution of a works contract and the legislative power, under Entry 54 of the State List, will have to be exercised subject to the restrictions and conditions prescribed in Section 14 read with Section 15 of the Act of 1956.

27. Leaving no room for doubt that a State legislature is not competent to impose a tax on goods declared to be of special importance in inter-State trade o

r commerce except in accordance with the restrictions and the conditions contain ed in Section 15 of the Central Sales Tax Act, 1956, the Apex Court, following i ts decision in Builders Association (supra), observed and held, in Gannon Dunker ly & Co. (Madras) Ltd. and others (supra), as under:

41. It must, therefore, be held that while enacting a law imposing a tax on sal e or purchase of goods under Entry 54 of the State List read with sub-clause (b) of clause (29-A) of Article 366 of the Constitution, it is not permissible for the State Legislature to make a law imposing tax on such a deemed sale which con stitutes a sale in the course of inter-State trade or commerce under Section 3 o f the Central Sales Tax Act or an outside sale under Section 5 of the Central Sa les Tax Act. So also it is not permissible for the State Legislature to impose a tax on goods declared to be of special importance in inter-State trade or comme rce under Section 14 of the Central Sales Tax Act except in accordance with the restrictions and conditions contained in Section 15 of the Central Sales Tax Act . (Emphasis is added)

28. From the above observations, there remains no room for doubt that a Stat e legislature cannot ignore the restrictions imposed by Section 15 of not imposi ng tax at a rate higher than 3% (as amended) of the sale or purchase price of su ch goods, which are declared goods under Section 14 of the Central Sales Tax Act , 1956.

29. From a patient and careful reading of Section 15, what becomes evident i s that every sales tax law of a State, in so far as it relates to imposition of tax on the sale or purchase of declared goods, would be subject to the condition that the tax under such law, in respect of sale or purchase of goods inside the State shall not exceed 3% of the sale or purchase price of the goods involved. There can be no dispute that Section 15 is designed to override and control, as correctly contended by Dr. Saraf, the power of the State to tax. One has to read Sections 14 and 15 together, for, both these sections constitute a scheme for t axation of goods declared to be of special importance in inter-State trade or co mmerce. While Section 14 enumerates the goods, which are declared as goods of sp ecial importance, Section 15 imposes various restrictions and lays down the cond itions subject to which sale and purchase of declared goods within the State can be subjected to tax. The underlined object of Sections 14 and 15 is to achieve a kind of uniformity in respect of States Sales Tax Act in respect of declared g oods.

30. It is, no doubt, true that the transfer of goods involved in the executi on of works contract is taxable as per the schedule to the Assam VAT Act, 2003, at the rate of 12.5%. Though in respect of transfer of property in goods involve d in the execution of works contract, rate of local tax has been prescribed at 1 2.5%, yet as far as declared goods are concerned, the State’s power to impose sa les tax on declared goods cannot exceed 3% as imposed by Section 15 of the Act o f 1956. It could not have been the legislative intent of the Assam VAT Act, 2003 , to impose the same rate of tax on declared as well as undeclared goods involve d in the execution of the works contract.

31. What logically follows from the above discussion is that while the State , under the Scheme of the Assam VAT Act, 2003, is competent to levy sales tax on transfer of property in goods involved in the execution of works contract @ 12. 5%, such transfer of property in goods involved in the execution of works contra ct will not exceed 3% if the goods involved in the execution of works contract a re declared goods. Thus, the impugned order, dated 10.04.2007, which holds that the tax is imposable @ 12.5% on both declared as well as undeclared goods is who lly without jurisdiction and not supported even by the scheme of the Act under c onsideration.

32. In the result and for the reasons discussed above, these two writ petiti ons succeed. The impugned order, dated 10.04.2007, is hereby set aside and quash ed and it is held that the Assam VAT Act, 2003, does not permit the respondents/

authorities concerned to impose tax @ 12.5% on transfer of such goods, which hav e been declared as goods of special importance under Section 14 of the Act of 19 56, and that on such declared goods, rate of tax cannot exceed 3% (as amended); whereas transfer of property in goods, which are not declared goods involved in the execution of works contract, would be subject to usual rate of tax of 12.5%.

33. With the above observations and directions, both these writ petitions sh all stand disposed of.

34. No order as to costs.